

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

WAN JIN LEEM,

Plaintiff,

v.

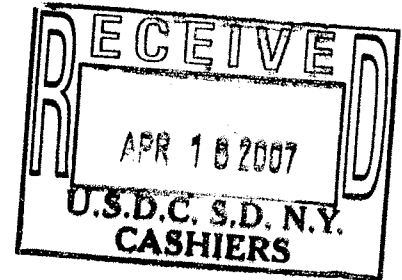
OK HWAN KIM, 341 SECOND AVE.  
FARM, INC., DOES 1-100,

Defendants.

JUDGE HOLWELL

07 Civ. CV 3116

COMPLAINT FOR FAILURE TO  
PAY FEDERAL AND STATE  
OVERTIME AND OTHER WAGES



**PRELIMINARY STATEMENT**

1. Plaintiff Wan Jin Leem (hereinafter referred to as "Leem") worked as an employee of Defendants from February 26, 2004 to May 29, 2006. During his employment, Plaintiff consistently worked more than 40 hours a week. Defendants have never paid Plaintiff for his overtime work. This is an action under the federal and state labor laws to recover damages suffered by Plaintiff as a result of Defendants' failure to pay Plaintiff's lawful wages plus liquidated damages and interest.

**JURISDICTION AND VENUE**

2. Jurisdiction is conferred on the Court by 28 U.S.C. §§ 1331 and 1337 and by 29 U.S.C. § 216. The Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367. This Court has venue pursuant to 28 U.S.C. §1391(b).

**PARTIES**

3. Plaintiff Leem is a former employee of Defendants.
4. Defendant 341 Second Ave. Farm, Inc. is a deli and grocery store located at 341 2<sup>nd</sup> Ave., New York, NY 10003.
5. Upon information and belief, Defendant Ok Hwan Kim (hereinafter, "Defendant Kim") is an individual proprietor of 341 Second Ave. Farm, Inc. and resides at 17151 45<sup>th</sup> Ave., Flushing, NY 11358-3314.

6. Upon information and belief, Defendant Kim is the sole owner, Chairman, and CEO of 341 Second Ave. Farm, Inc. He is also the manager of the business and has the power to hire and fire employees, set their wages, set their schedules, and maintain their employee records. During Plaintiff's employment, Defendant Kim was Plaintiff's employer as that term is defined by the Fair Labor Standards Act and New York Labor Law.

### **STATEMENT OF FACTS**

7. Plaintiff was employed as a night laborer with Defendant 341 Second Ave. Farm, Inc. Plaintiff performed general duties for Defendants, such as restocking shelves, preparing packaged food, making sandwiches at the deli counter, and acting as a cashier.

8. Plaintiff generally worked from 7:30 pm to 7:30 am and was given one meal break usually lasting 30 minutes.

9. Plaintiff's agreed-upon rate of base pay was \$550 per week.

10. Plaintiff has never been paid overtime pay for his hours over 40 hours a week.

11. Plaintiff has never been paid an extra hour's pay for each day that he worked more than 10 hours a day.

12. The wages that Plaintiff has received were all paid in cash.

13. Upon information and belief, Defendants willfully and intentionally did not maintain employment records of Plaintiff's employment.

14. Defendants willfully and intentionally failed to pay Plaintiff all of the wages to which he was entitled under law.

### **FIRST CAUSE OF ACTION**

#### **Federal Overtime Violation**

15. Plaintiff alleges and re-alleges the allegations set forth in paragraphs 3 through 14, above.

16. Defendants' intentional failure to pay Plaintiff overtime pay violates 29 U.S.C. § 201 et seq.

### **SECOND CAUSE OF ACTION**

**State Overtime and Spread of Hours Pay Violations**

17. Plaintiff alleges and re-alleges the allegations set forth in paragraphs 3 through 14, above.

18. Defendants' intentional failure to pay Plaintiff the proper overtime and spread of hours pay violates New York Labor Law §§ 650 et seq. and supporting regulations and orders of the New York State Department of Labor.

**PRAYER FOR RELIEF**

WHEREFORE Plaintiff respectfully requests that a judgment be granted as follows:

- a. Awarding Plaintiff all back wages, overtime, and spread of hours pay due, together with compensatory damages, liquidated damages, and prejudgment interest;
- b. Awarding Plaintiff his attorney's fees and costs; and,
- c. Granting such other and further relief as is just and proper.

Dated: April 18, 2007  
New York, New York

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